IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

FAO.No. 4 of 2007()

AGAINST THE ORDER DATED 18/09/2006 IN IA 1741/2006 IN OS.1034/2002 of I ADDL.SUB COURT, THRISSUR

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: APPELLANT/PETITIONER-DEFENDANT

JOBY, S/O.PORINCHU,
PROPRIETOR, ART HOME ADVERTISING MEDIA,
THIROOR DESOM, KOLAZHY VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

RESPONDENTS: RESPONDENT- PLAINTIFF

COCHIN DEVASWOM BOARD,
REPRESENTED BY SECRETARY,
COCHIN DEVASWOM BOARD OFFICE,
ROUND NORTH, THRISSUR.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & A.K.BASHEER, JJ.

F.A.O. No.4 of 2007

Dated 5th January, 2007.

J U D G M E N T

Basheer, J.

This appeal depicts a classic instance as to how a litigant can abuse the process of court.

2. The defendant in a suit for realisation of money is the appellant in this appeal, which is directed against an order passed by the court below dismissing his application filed under Order IX Rule 13 of the Code of Civil Procedure. The respondent had filed the above suit way back in the year 2002. It is beyond controversy that the appellant/defendant had remained absent on crucial dates whenever the case came up for trial on previous occasions. On all the previous occasions, the court below had shown indulgence. The ex parte orders against him (on one occasion an ex parte decree as well) were set aside. Ultimately when the suit came up for trial in February, 2006, the appellant remained absent again and he was set ex parte. The suit was decreed on February 7, 2006. It was thereafter that the appellant

had preferred the present application under Order 9 Rule 13 C.P.C.

3. The court below had adverted to the previous conduct of the appellant in great detail in the order. We have carefully perused the impugned order and the relevant materials on record. It is seen that in the year 2003, the appellant/petitioner had remained absent and he was set ex parte. The application filed by him to set aside ex parte order was allowed. Later he again remained absent when the case came up for trial. He was set ex parte. A decree followed. That ex parte decree was also set aside. Yet again on the third occasion, the appellant/petitioner repeated the performance and the court below once again set aside the order and gave him a further chance. This is the fourth occasion when the petitioner has tried the same play.

4. Having gone through the materials on record, we do not find any reason to interfere with the order passed by the court below, though learned counsel for the appellant had made an impassioned plea that the appellant may be given a further chance on exemplary cost. We are not satisfied that it is a fit case where such indulgence should be shown. No litigant shall be

allowed to abuse the process of court.

The appeal fails and the same is dismissed.

KURIAN JOSEPH, JUDGE.

A.K.BASHEER, JUDGE.

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KURIAN JOSEPH & A.K.BASHEER, JJ

W.P.(C) NO. OF 2004

J U D G M E N T

Dated 5th January, 2007.